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10 JPMORGAN CHASE BANK, N.A.

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13  
14 ROGER AL-CHAIKH, individually  
15 and on behalf of other members of the  
16 general public similarly situated, and  
17 as aggrieved employees pursuant to the  
Private Attorneys General Act  
("PAGA"),

18 Plaintiff,

19 vs.

20 JPMORGAN CHASE BANK; and  
21 DOES 1 through 10, inclusive,

22 Defendants.  
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Case No. 11-CV-5646 PSG (PLAx)

Hon. Philip S. Gutierrez

**DEFENDANT'S MEMORANDUM IN  
SUPPORT OF MOTION TO DISMISS  
DUPLICATIVE ACTION**

Date: September 26, 2011

Time: 1:30 p.m.

Courtroom: 880

## I. INTRODUCTION

Defendant JPMORGAN CHASE BANK, N.A.<sup>1</sup> (“Defendant” or “Chase”) seeks an Order dismissing this copycat action filed by Plaintiff Roger Al-Chaikh (“Plaintiff”) because earlier-filed cases, involving the same putative class (Chase bank tellers) and the same legal claims (alleged failure to pay all wages due, provide meal and rest breaks, and reimburse employees for necessary business expenditures) are already pending in this Court: *Salazar v. JPMorgan Chase & Co.*, C.D. Cal. Case No. 11-CV-4294-PSG-PLAx (“*Salazar* action”), and *Hightower v. JPMorgan Chase Bank, N.A.*, C.D. Cal. Case No. 11-CV-1802-PSG-PLAx (“*Hightower* action”).

Given that this action was filed several months after these earlier-filed actions, Chase seeks to dismiss the present action pursuant to the “first-to-file” rule or, alternatively, under the Court’s inherent discretion to dismiss duplicative cases on its own docket. All elements of the first-to-file rule are satisfied -- the *Al-Chaikh* action was filed last, it involves identical parties (Chase tellers), and it involves identical claims. Indeed, each claim in the *Al-Chaikh* action is already pending before this Court in other actions and, accordingly, the Court should dismiss or stay this action.

## II. FACTUAL BACKGROUND

### A. The First Action: *Salazar v. JPMorgan Chase & Co.*

On February 17, 2011, plaintiff Carolyn Salazar filed a putative class action entitled *Salazar v. JPMorgan Chase & Co.*, in the Southern District of California, Case No. 3:11-cv-00337. Declaration of Carrie A. Gonell (“Gonell Decl.”) ¶ 3; Ex Ex. 1. The *Salazar* complaint alleges, among other claims, that non-exempt tellers in California perform off-the-clock work, work through their meal and rest breaks,

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<sup>1</sup> The Complaint improperly names “JPMorgan Chase Bank” as defendant. Plaintiff was not employed by JPMorgan Chase Bank, but by JPMorgan Chase Bank, N.A., and Defendant reserves all rights and defenses thereto.

1 and incur necessary business expenditures without reimbursement. Ex. 1, ¶¶ 36,  
2 43, 45.

3 Salazar alleges that she worked as a teller and seeks to represent a putative  
4 class of all current and former employees of Chase who worked in California as  
5 “tellers.” *Id.* ¶¶ 12, 13. On April 4, 2011, Plaintiff Salazar stipulated to transfer  
6 her action to the Central District of California, where the action was subsequently  
7 reassigned to this Court. *See Salazar* Dkt. Nos. 11, 16, 17. This Court was already  
8 presiding over another class action involving Chase bank employees, *Hightower, et*  
9 *al. v. JPMorgan Chase Bank, N.A.*, C.D. Cal. Case No. 11-CV-1802-PSG-PLAx.

10 **B. The Second Action: *Hightower v. JPMorgan Chase Bank, N.A.***

11 Plaintiffs Evan Hightower and Ann Ross originally filed their class action  
12 complaint, entitled *Hightower v. Washington Mutual Bank*, on March 2, 2011, in  
13 the Central District of California, Case No. 11-CV-1802-PSG-PLAx. *See*  
14 *Hightower* Dkt. No. 1. Plaintiffs Hightower and Ross later substituted JPMorgan  
15 Chase Bank, N.A., as the named defendant. *See Hightower* Dkt. Nos. 5, 11.

16 Plaintiff Ross alleges that she worked as a teller and brought her claims on  
17 behalf of “[a]ll current and former non-exempt employees of Chase who have  
18 worked in California at a retail bank branch at any time since September 25, 2008.”  
19 Gonell Decl. ¶ 4, Ex. 2. The amended complaint alleges, among other claims, that  
20 Chase required non-exempt employees to work off-the-clock and to work through  
21 meal and rest breaks. Ex. 2, ¶ 52.

22 **C. The Copycat Action: *Al-Chaikh v. JPMorgan Chase Bank***

23 On May 24, 2011, Plaintiff Roger Al-Chaikh filed his copycat action in the  
24 Los Angeles Superior Court, Case No. BC462142. Gonell Decl. ¶ 5, Ex. 3. The  
25 *Al-Chaikh* complaint alleges that tellers were required to perform off-the-clock  
26 work, that they were required to work through their meal and rest breaks, and that  
27 they were not reimbursed for all necessary business expenditures. ¶¶ 46, 52, 58.

28 On July 8, 2011, Chase removed this case to the Central District. *See Al-*

1 *Chaikh* Dkt. No. 1. On July 27, 2011, the case was reassigned to this Court as a  
2 related case.

3 **III. THIS COURT SHOULD DISMISS THE AL-CHAIKH ACTION**  
4 **UNDER THE “FIRST-TO-FILE” RULE.**

5 This Court has discretion to dismiss the instant *Al-Chaikh* action under the  
6 “first-to-file” rule, because similar cases involving identical claims and parties are  
7 already pending before the Court.

8 In the Ninth Circuit, the first-to-file rule is “a generally recognized doctrine  
9 of federal comity which permits a district court to decline jurisdiction over an  
10 action when a complaint involving the same parties and issues has already been  
11 filed.” *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) .  
12 This well-established rule allows a district court to dismiss the second action after  
13 declining jurisdiction. *Ward v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal.  
14 1994); *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 97 (9th Cir.1982)  
15 (dismissing later-filed case).

16 The underlying purposes of the first-to-file rule are to avoid duplicative  
17 litigation and promote judicial efficiency, which “should not be disregarded  
18 lightly.” *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1097 (N.D.  
19 Cal. 2006); *Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc.*, 179 F.R.D.  
20 264, 269 (C.D. Cal. 1998); *Alltrade, Inc. v. Uniweld Products*, 946 F.2d 622, 625  
21 (9th Cir. 1991). The court that “first acquired jurisdiction should try the lawsuit  
22 and “no purpose would be served by proceeding with a second action.” *Pacesetter*,  
23 678 F.2d at 95. Accordingly, “unless compelling circumstances justify departure  
24 from this rule,” the first-filed case “should be permitted to proceed without concern  
25 about a conflicting order being issued in the later filed action.” *Ward*, 158 F.R.D at  
26 648-50.

27 The case for applying the first-to-file rule is most compelling where  
28 duplicative cases are pending before the same judge. Parties “generally have ‘no

1 right to maintain two separate actions involving the same subject matter at the same  
 2 time in the same court and against the same defendant.” *Latham Orthopedics Med.*  
 3 *Group v. U.S.-Corp.*, 2010 WL 4585240, \*2 (C.D. Cal. Nov. 2, 2010) (quoting  
 4 *Adams v. Cal. Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007)).  
 5 Accordingly, a “district court may exercise its discretion to control its docket by  
 6 dismissing a duplicative, later-filed action.” *Id.* Moreover, the Ninth Circuit has  
 7 held that appellate courts necessarily grant “an ample degree of discretion,  
 8 appropriate for disciplined and experienced judges” when a district court has  
 9 “duplicative suits contemporaneously pending on its docket”. *Adams*, 487 F.3d at  
 10 692.

11 In the Ninth Circuit, district courts applying the first-to-file rule look to three  
 12 threshold factors, all of which are met here: (1) the chronology of the actions (i.e.,  
 13 which action was filed first); (2) the similarity of the parties; and (3) the similarity  
 14 of the issues. *Bryant v. Oxxford Express, Inc.*, 181 F. Supp. 2d 1045, 1048 (C.D.  
 15 Cal. 2000). In this case, all three threshold factors have been met because the *Al-*  
 16 *Chaikh* action was the last filed, the putative class in *Al-Chaikh* is identical or  
 17 subsumed by the putative classes in the earlier actions, and the *Al-Chaikh* action  
 18 alleges the same claims that have already been alleged in the *Salazar*, and  
 19 *Hightower* actions.

20 **A. Chronology of Actions: *Al-Chaikh* Was Filed Last**

21 The “chronology of actions” requirement for the first-to-file rule is met,  
 22 because it is undisputed that the *Salazar* and *Hightower* actions were already  
 23 pending when the *Al-Chaikh* action was filed. *See Salazar* Dkt. No. 1; *Hightower*  
 24 Dkt. No. 1; *Al-Chaikh* Dkt. No.1.

25 **B. Similarity of Parties: The Parties Are Identical Or Substantially**  
 26 **Similar**

27 The “similarity of parties” requirement for the first-to-file rule is also met,  
 28 because the putative class defined in the *Al-Chaikh* Complaint is identical to or

1 subsumed by the putative classes in the earlier actions.

2 In a class or collective action, the putative classes, and not the class  
3 representatives, are compared. *Weinstein v. Metlife, Inc.*, No. C-06-4444 SI, 2006  
4 WL 3201045 at \*4 (N.D. Cal. Nov. 6, 2006) (“[I]t is the class, not the  
5 representative, that is compared.”); *Fuller v. Abercrombie & Fitch Stores, Inc.*, 370  
6 F. Supp. 2d 686, 689 (E.D. Tenn. 2005) (under the first-to-file rule, plaintiffs in two  
7 separate actions are “substantively similar” where “both actions seek certification  
8 of the same collective class”). The first-to-file rule applies even if the first-filed  
9 action has not yet been certified as a class or collective action. *See Weinstein*, 2006  
10 WL 3201045 at \*5 (staying second action despite the fact that the first-filed action  
11 had not been certified).

12 Here, the putative class members in the *Al-Chaikh* action are identical to the  
13 putative class of tellers in the *Salazar* action. Moreover, the putative class in the  
14 *Hightower* action includes the teller class of the *Al-Chaikh* action. Thus, Plaintiff  
15 Roger Al-Chaikh, and every member of the class he seeks to represent, is already a  
16 member of the putative classes in the earlier-filed actions, and he meets the  
17 “similarity of parties” requirement.

18 **C. Similarity of Issues: The Issues Are Substantially Similar**

19 As set forth in detail above, the *Al-Chaikh* action alleges claims involving  
20 alleged off-the-clock work, meal-and-rest-break violations, and failure to reimburse  
21 necessary business expenses – each of which has been alleged in the earlier  
22 complaints. Accordingly, this aspect of the first-to-file rule is satisfied as well.

23 **D. Equitable Considerations Do Not Warrant An Exception to the**  
24 **First-to-File Rule**

25 In certain equitable situations, such as bad faith, anticipatory suit, and forum  
26 shopping – none of which exist here – some courts recognize exceptions to the first-  
27 to-file rule. *See Alltrade*, 946 F.2d at 628; *see also Meintz v. Regis Corp.*, 2010 WL  
28 625338, \*2 (S.D. Cal. Feb. 16, 2010) (“[U]nless a lawsuit was filed in bad faith,

1 was anticipatory, or involved forum shopping, courts should generally apply the  
 2 first to file rule”). None of these equitable exceptions apply here, because the *Al-*  
 3 *Chaikh* Action was not an anticipatory suit filed by Chase, but a lawsuit filed by  
 4 another Chase teller. Forum shopping is not present, because all of these cases are  
 5 currently in the same forum.

6 Indeed, equitable considerations weigh in favor of a dismissal. This Court  
 7 would waste judicial resources by adjudicating the common class claims in *Salazar*  
 8 and *Hightower*, only to repeat those efforts and adjudicate the exact same class  
 9 claims again. Thus, a dismissal would promote judicial efficiency and avoid  
 10 duplication of litigation.

#### 11 **IV. CONCLUSION**

12 For the foregoing reasons, the Court should apply the first-to-file rule, or  
 13 apply its discretion over its own docket, and dismiss or stay the instant *Al-Chaikh*  
 14 action.

15  
 16 Dated: August 10, 2011

MORGAN, LEWIS & BOCKIUS LLP

17  
 18 By /s/Carrie A. Gonell

Carrie A. Gonell

Attorneys for Defendant

JPMORGAN CHASE BANK, N.A.